



**Advancement Project Public Comment  
Submitted to the Presidential Commission on Election Administration  
for its public meeting in Miami, Florida on June 28, 2013**

Advancement Project,<sup>1</sup> a national, non-partisan, civil rights and racial justice organization submits this public comment to the Presidential Commission on Election Administration (“Commission”) regarding its agenda for the public meeting in Miami, Florida scheduled for June 28, 2013. Our comments below relate to the following topics of the Executive Order: (i) the number, location, management, operation, and design of polling places; (ii) the training, recruitment, and number of poll workers; (iv) the efficient management of voter rolls and poll books; (vii) voting accessibility for individuals with disabilities, limited English proficiency, and other special needs; (viii) management of issuing and processing provisional ballots in the polling place on Election Day; and (ix) the issues presented by the administration of absentee ballot programs.<sup>2</sup> Each of these areas is discussed in our Comments, and we are providing data about the long lines in Florida and other election administration problems that have had a discriminatory impact on voters of color in Section II below. Finally, our recommendations related to Executive Order 13639 addressing each of the areas mentioned above, are detailed in Section III below.

Since the 2000 presidential election, Advancement Project has worked in Florida in collaboration with state and local elections officials and community partners to forge the relationships necessary to advance election reform. Our work seeks to build the legal and procedural framework necessary to protect fundamental voting rights and to remove barriers to voting for voters of color. Advancement Project submits comments below that relate to the topics listed in President Barack Obama’s Executive Order 13639.<sup>3</sup> We are also hereby attaching and submitting a new study by Professors Daniel Smith and Michael Herron, sponsored by Advancement Project, which is the only known study of the issue of the long lines based on actual election administration (rather than polling) data. Their report includes data from precinct closing times around the state that covers 5,196 of the roughly 6,100 precincts that were in use in Florida for the 2012 General Election.

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<sup>1</sup> Advancement Project is a next generation, multi-racial civil rights organization, founded in 1999 by a team of veteran civil rights lawyers. We exist to fulfill America’s promise of an inclusive and just democracy, rooted in the great human rights struggles for equality and justice. We use innovative tools and strategies to strengthen social movements and achieve high-impact policy change. Locally, we provide strategic policy, legal, and communications support to grassroots organizations, increasing their capacity to identify and address racial injustices in their communities. On the national level, we extend and replicate lessons learned on the ground, through the use of legal advocacy, networking, media outreach, and public education.

<sup>2</sup> Exec. Order No. 13639 § 3(a) (2013).

<sup>3</sup> Exec. Order No. 13639 § 3(a) (2013).

As discussed below, the data shows an unmistakably clear disparate impact of the long lines on African-American and Latino voters in counties across the state of Florida. Notably, the state of Florida itself admitted there were problems during the 2012 elections. After the November election, Governor Rick Scott conceded that improvements to the state's election process were needed and asked Secretary of State Detzner to meet with Supervisors of Elections from counties that had wait times in excess of four hours.<sup>4</sup> Secretary of State Ken Detzner's report issued in March of 2013, "Recommendations for Increased Accessibility & Efficiency in Florida Elections" noted, "most, if not all, counties experienced longer wait times than in previous elections due to factors including the record number of voters, a shortened early voting schedule, inadequate voting locations, limited voting equipment and a long ballot."<sup>5</sup> Despite these findings by the Secretary of State, Detzner, his report included many half measures that Advancement Project believes do not go far enough to solve the problems of the long lines.<sup>6</sup> Our comments below include specific recommendations on how to fix this "Time Tax" that many voters of color have paid by standing in line countless hours during both early voting and on Election Day in Florida.<sup>7</sup>

Advancement Project has a long history and well-established expertise in finding, spotlighting, and working to eliminate structural barriers that make it harder for eligible voters of color to participate in our democracy. For example, Advancement Project has uncovered and reported systemic disenfranchisement schemes relating to deficient and disparate poll worker training protocols, provisional ballot policies and practices, polling place resource allocations, caging practices, and voter purges.<sup>8</sup> As discussed herein, our work against discriminatory voting

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<sup>4</sup> Michael C. Herron & Daniel A. Smith, *Congestion at the Polls: A Study of Florida Precincts in the 2012 General Election*, Advancement Project, 2 (June 24, 2013).

<sup>5</sup> *Id.* at 3 (quoting Ken Detzner, *Recommendations for Increased Accessibility & Efficiency in Florida Elections*, Florida Department of State, Feb. 4, 2013, [http://www.dos.state.fl.us/pdf/2-4-2013\\_Recs\\_for\\_Increased\\_Accessibility\\_and\\_Efficiency\\_in\\_FL\\_Elections.pdf](http://www.dos.state.fl.us/pdf/2-4-2013_Recs_for_Increased_Accessibility_and_Efficiency_in_FL_Elections.pdf)).

<sup>6</sup> *Id.*

<sup>7</sup> A "Time Tax" is a term coined by Christopher Edley, Jr. in "A Voting Rights Disaster?" Wash. Post, Oct. 28, 2008 available at [http://articles.washingtonpost.com/2008-10-28/opinions/36789602\\_1\\_poll-workers-paper-ballots-registrars](http://articles.washingtonpost.com/2008-10-28/opinions/36789602_1_poll-workers-paper-ballots-registrars). "A 'time tax' is a government policy or practice that forces one citizen to pay more in time to vote compared with her fellow citizens. While few have noticed the scope of the problem, data indicate that, due primarily to long lines, hundreds of thousands if not millions of voters are routinely unable to vote in national elections as a result of the time tax, and that the problem disproportionately affects minority voters and voters in the South." See Elora Mukherjee, "Abolishing the Time Tax on Voting," 85 Notre Dame L. Rev. 177, 177 (2009).

<sup>8</sup> See generally Advancement Project Reports: Advancement Project, "Segregating American Citizenship: Latino Voter Disenfranchisement in 2012," (Sept. 2012) available at <http://www.advancementproject.org/resources/entry/segregating-american-citizenship-latino-voter-disenfranchisement-in-2012>; Advancement Project, "Legislative Reforms to Remove Barriers to Voting in Florida," (June 2010) available at <http://www.advancementproject.org/resources/entry/legislative-reforms-to-remove-barriers-to-voting-in-florida>; Advancement Project, "Barriers to the Ballot Box: 2008 Election and Beyond," (Dec. 2009) available at [http://b3cdn.net/advancement/d7df05e3fa7acc388a\\_7wm6b6fht.pdf](http://b3cdn.net/advancement/d7df05e3fa7acc388a_7wm6b6fht.pdf); Advancement Project, "In Pursuit of an Affirmative Right to Vote," (July 2008), available at [http://b3cdn.net/advancement/ae94ee5ad8686f5760\\_27m6vr0j7.pdf](http://b3cdn.net/advancement/ae94ee5ad8686f5760_27m6vr0j7.pdf); Advancement Project "Provisional Voting: Fail-Safe Voting or Trapdoor to Disenfranchisement?" (Sept. 2008) available at [http://b3cdn.net/advancement/1f0cae01ce9968e434\\_ebm6b67ix.pdf](http://b3cdn.net/advancement/1f0cae01ce9968e434_ebm6b67ix.pdf); Advancement Project, "Voting in 2004: A Report on America's Election Process," (Dec. 2004) available at

procedures has included extensive litigation in Florida.<sup>9</sup> More recently, Advancement Project has investigated the causes and consequences of long lines at polling locations for voters of color. To assist in this effort, Advancement Project engaged Professors Daniel Smith and Michael Herron, recognized experts in the field of political science and election administration, to conduct a series of data analyses in order to pinpoint the disparate voting experiences of Americans, from the standpoint of waiting times, based on race. Herein, Advancement Project analyzes their extensive research to recommend precise measures to shorten lines and eliminate disparities for in-person voting. We plan to spotlight the problem of long lines in Virginia as well as national perspectives on these and other voting rights issues that fall under the jurisdiction of the Commission, in future analyses. We are grateful to Professors Smith and Herron for their ground-breaking research on the issue in Florida. We present their study and our analyses now to be helpful to this Presidential Commission on Election Administration, beginning with a focus on Florida, along with our preliminary recommendations.

First, regarding all of the topics of the Executive Order and particularly (vii), the history of voting-related discrimination in Florida must be taken into account.

## **I. Background: History of Voting Related Discrimination in Florida**

Advancement Project brought several cases, starting with *NAACP v. Harris* in 2000, regarding discrimination in voting in Florida due to voters being improperly turned away from the polls.<sup>10</sup> In 2000 and 2004, Florida used a flawed method to come up with a listing of people believed to have previous felony convictions.<sup>11</sup> In 2007, Advancement Project brought a lawsuit against Florida Secretary of State Kurt Browning challenging a Florida state law that prevented voter registration applicants from being added to the voter rolls if the state could not match or otherwise validate the driver's license or Social Security number on the applicant's registration form.<sup>12</sup> This case was favorably settled and over 16,000 eligible but not matched voters were added to the rolls.<sup>13</sup>

Once again, in 2012, voters of color were also disparately impacted by Florida's flawed voter purge efforts. Naturalized citizens like Karla Vanessa Arcia, whose name was wrongly placed on a list of ineligible voters, were targeted as part of an aggressive program in Florida to remove alleged noncitizens from its list of eligible voters. Miami-Dade's supervisor of elections sent Arcia a letter giving her 30 days to prove her citizenship and residency. The majority of voters sent such letters were Latino, and 82 percent were voters of color.<sup>14</sup> Florida's flawed

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<http://www.advancementproject.org/resources/entry/voting-in-2004-a-report-to-the-nation-on-americas-election-process>.

<sup>9</sup> See Discussion of relevant litigation regarding discriminatory treatment of voters of color in Florida, discussed in Section I below.

<sup>10</sup> *NAACP v. Harris*, Case No. 1:01-cv-00120-ASG (S.D. Fla. 2001).

<sup>11</sup> Ford Fessenden, Florida List for purge of Voters Proves Flawed, July 10, 2004, N.Y. Times available at <http://www.nytimes.com/2004/07/10/us/florida-list-for-purge-of-voters-proves-flawed.html>.

<sup>12</sup> *NAACP v. Browning*, 1:07-mc-22919-FAM (S.D. Fla. 2007).

<sup>13</sup> *Id.*

<sup>14</sup> Compl. ¶ 26, *Arcia v. Detzner*, 1:12-CV-22282 (S.D. Fla., June 19, 2012) (82% of voters on purge list of 2,625 Florida voters were voters of color).

purge list showed that liberty, at least as exercised at the polling booth, was far less secure than it should be—over 98% of the 562 people who responded to the purge letters in Miami-Dade proved they were U.S. citizens.<sup>15</sup> Although Advancement Project and our partners favorably settled a discrimination claim under Section 2 of the Voting Rights Act,<sup>16</sup> Arcia is now a plaintiff in Advancement Project's ongoing lawsuit. This lawsuit challenges the purge of alleged noncitizens through the inappropriate use of federal SAVE immigration data as a violation of the National Voter Registration Act's prohibition on purging within 90 days of a federal election.<sup>17</sup> We also advocated against measures that would have harmed voters of color, such as a recent amendment introduced by Florida Senator Latvala, which would have limited the rights of limited-English proficient ("LEP") and other voters with literacy issues, as well as persons with disabilities, to receive assistance.<sup>18</sup> Although we and our community partners were able to convince Senator Latvala to withdraw his amendment, in part because of the protections of Section 208 of the Voting Rights Act, 42 U.S.C. § 1973aa-6, due to the history of failure to provide language assistance in Florida, we remain concerned about the rights of LEP voters and other voters who need assistance.<sup>19</sup>

In addition to the history of voting related discrimination discussed above, Florida's felony disenfranchisement laws impact more people than any other state in the country: as of 2010, an estimated 1,541,602 people could not cast a ballot due to previous felony convictions.<sup>20</sup> More than 10 percent of voting-age Floridians are excluded from the ballot box, including almost a quarter of African Americans in the state.<sup>21</sup> Florida's outdated and unjust laws are responsible for 28 percent of the 5.8 million citizens nationwide denied the vote due to felony convictions.<sup>22</sup> Most disenfranchised Floridians have already completed their sentences and paid their debt to society, yet are still denied the right to vote. According to estimates, about 1.3 million Floridians with a prior felony conviction have paid their debt to society.<sup>23</sup> Nationwide, about 2.6 million disenfranchised persons have completed their sentences.<sup>24</sup> That means Florida is home to half the nation's post-sentence disenfranchised. As in other states, African Americans suffer a disproportionate impact from Florida's felony disenfranchisement system.

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<sup>15</sup> *Id.* at ¶ 39.

<sup>16</sup> Stipulation Agreement, *Arcia v. Detzner*, 1:12-cv-22282-WJZ (S.D. Fla. Sept. 12, 2012) available at [http://b.3cdn.net/advancement/dc5b7211a4b10c40a7\\_nkm6bh3d0.pdf](http://b.3cdn.net/advancement/dc5b7211a4b10c40a7_nkm6bh3d0.pdf).

<sup>17</sup> See Notice to Counsel, *Arcia v. Florida Secretary of State*, No. 12-15738 (11<sup>th</sup> Cir., May 17, 2013)(scheduling oral argument the week of October 7, 2013 in Miami).

<sup>18</sup> See, e.g., Advancement Project and Florida New Majority, Letter to Senator Latvala (April 16, 2013) available at [http://b.3cdn.net/advancement/17538443384d5729c1\\_ikm6b5tu8.pdf](http://b.3cdn.net/advancement/17538443384d5729c1_ikm6b5tu8.pdf).

<sup>19</sup> *Id.*

<sup>20</sup> Christopher Uggen et al., *State-Level Estimates of Felon Disenfranchisement in the United States, 2010*, The Sentencing Project (July 2012) [hereinafter *State-Level Estimates of Felon Disenfranchisement*], available at [http://sentencingproject.org/doc/publications/fd\\_State\\_Level\\_Estimates\\_of\\_Felon\\_Disen\\_2010.pdf](http://sentencingproject.org/doc/publications/fd_State_Level_Estimates_of_Felon_Disen_2010.pdf).

<sup>21</sup> *Id.* at 17.

<sup>22</sup> *Id.* at 16. See *Florida No. 1 in Barring Ex-prisoners from Voting*, ActionNewsJax.com, May 18, 2013, available at <http://www.actionnewsjax.com/news/state/story/Florida-No-1-in-barring-ex-prisoners-from-voting/2eenbCBGAUexRwDBY35j2w.csp>.

<sup>23</sup> *State-Level Estimates of Felon Disenfranchisement*, at 14.

<sup>24</sup> *Felon Disenfranchisement Laws in the United States*, The Sentencing Project (November 2012), available at [http://www.sentencingproject.org/doc/publications/fd\\_bs\\_fdlawsinus\\_Nov2012.pdf](http://www.sentencingproject.org/doc/publications/fd_bs_fdlawsinus_Nov2012.pdf).

Furthermore, federal courts have found that there is a long history of discrimination in voting across the state of Florida.<sup>25</sup> The ballot box is one place where Americans are supposed to be equal, no matter what our race, ethnicity, age, gender, sexual orientation or income level. Given Florida's past and recent history of discrimination in voting, it was not surprising that there were further election administration problems making it harder for African Americans and Latinos to vote in Florida in 2012.

## **II. Comments**

### **A. Long Lines that Disproportionately Affected African American and Latino Voters**

The long lines and their disparate impact relate to the following issues of Executive Order 13639: (i) polling place resources; (ii) poll workers; (iv) efficient management of voter rolls and poll books; and (vii) equal access.

The attached Advancement Project study by Professors Daniel Smith and Michael Herron is the only study of the issue of long lines in Florida based on actual election administration (rather than polling) data.<sup>26</sup> This groundbreaking study of closing times of 5,196 (85%) of the 6,100 precincts on Election Day 2012 in Florida as well as the voter files, which include self-identification of race (as Black, Hispanic or White).<sup>27</sup> Their study also includes in-depth research on early voting wait times in Miami-Dade, the only county that kept track of wait times during the early voting period that was considerably shortened by Florida law prior to the 2012 Election. The precinct-level study covers more than 90% of Florida's 12.6 million registered voters and more than 92% of the 3.7 million who voted on Election Day and practically all of the early voters who cast ballots during the eight days of early voting in Miami-Dade County. Our experts found that:

“Our detailed within-county analyses of precinct demographics and closing times, covering more than 92% of the 3.7 million who voted on Election Day, reveal that precincts with greater proportions of Hispanics-and in several counties, precincts with high proportions of Blacks- had later closing times on Election Day relative to precincts with higher concentrations of White voters. We also find that in Miami-Dade County,

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<sup>25</sup> See generally *Johnson v. DeSoto Cnty. Sch. School Bd.*, 995 F. Supp. 1440 (M.D. Fla. 1998); *Davis v. Chiles*, 139 F.3d 1414, 1419 (11<sup>th</sup> Cir. 1998) (“Florida has had a history of racially discriminatory voting practices and . . . continuing socio-economic disparities are hindering blacks’ participation in the political process in these districts.”); See *United States v. Osceola County, Florida*, No. 6:02-CV-738-ORL-22JGG (M.D. Fla. July 22, 2002) (consent decree); *U.S. v. Osceola County*, 6:05-cv-1053-Orl-31DAB, 20 (M.D. Fla. Oct. 29, 2006).

<sup>26</sup> Herron and Smith’s analysis includes data from 41 of Florida’s 67 counties, including the 25 most populated counties. As such, our coverage of Florida’s precincts is not complete but is nevertheless quite comprehensive; we have closing times for 5,196 precincts in the state, slightly less than 85% of all the Election Day precincts deployed by Florida’s 67 Supervisors of Elections during the course of the 2012 General Election. Additionally, the precincts in our study account for more than 90% of the roughly 12.6 million voters who were registered in Florida in 2012, and they encompass more than 92% of the 3.7 million voters who cast in-person ballots in precincts on Election Day.

<sup>27</sup> Florida Voter Registration Application DS-DE #39, RIS-2.040 available at <http://election.dos.state.fl.us/pdf/webappform.pdf>.



early voting polling stations with the greatest concentrations of Hispanic and Black early voters had disproportionately long wait times at both the start and close of polls each day, especially on the final Saturday of early voting. Our examination of the correlates of precinct-level socio-demographics and congestion at the polls in Florida provides empirical evidence of the disparate impact of long lines on people of color during the 2012 General Election.”<sup>28</sup>

- On Election Day across the state, the greatest time tax was paid by Latino voters, but generally speaking, Black voters also waited slightly longer than White voters. This may be in part because Black voters used early voting more than the other racial groups.<sup>29</sup>
- Young voters under 30 were also found to have waited longer than older voters, including those over 65.<sup>30</sup>
- The experts state that their analysis of early voting in Miami-Dade “should raise suspicions that the shortening of early voting days that the state of Florida implemented in 2011 may have had an impact on wait times in polling stations that had greater densities of people of color trying to exercise their right to vote.”<sup>31</sup>
- Across more densely urban counties—both large and medium-sized—late precinct closing times on Election Day are concentrated in heavily Hispanic precincts, and early precinct closing times are associated with predominantly White voters; however, Black voters also waited longer than White voters in many counties.
- In Hillsborough County, for example, our experts found that “plots of Election Day voters across the county’s 350 precincts show unmistakable correlations between the racial and ethnic makeup of the precincts and closing times. As the racial and ethnic composition of Hillsborough precincts becomes more Black or Hispanic, said precincts had lengthier closing times.”<sup>32</sup>

The data also demonstrates that:

- Seven counties (Miami-Dade, Orange, Lee, Volusia, Pasco, St. Lucie, and Collier) reported having at least one precinct that did not close until after midnight.<sup>33</sup>
- In Miami- Dade, an average of 73 minutes elapsed before the final voter in line cast a ballot after the 7:00pm close of polls, with at least one precinct processing its last voter seven hours after the polling station was closed.<sup>34</sup>

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<sup>28</sup> Michael C. Herron & Daniel A. Smith, *Congestion at the Polls: A Study of Florida Precincts in the 2012 General Election*, Advancement Project, 1 (June 24, 2013).

<sup>29</sup> *Id.* at 57-59.

<sup>30</sup> *Id.* at 56.

<sup>31</sup> *Id.* at 57.

<sup>32</sup> *Id.* at 32.

<sup>33</sup> *Id.* at 16.

- Precincts in Broward County, which has a higher White population than other large counties, reported closing on average just 25 minutes after 7:00pm, although at least one of Broward's more than 600 precincts did not close until more than three hours after 7:00pm.<sup>35</sup>
- Miami-Dade precincts that were heavily subscribed with Hispanic voters on Election Day had considerably later closing times. Indeed, many of the precincts with the Election Day closing times farthest past 7:00pm had high concentrations of Hispanic voters.<sup>36</sup>
- In Orange County, precincts with high proportions of Hispanics who turned out on Election Day had much later closing times, on average, than did those with predominantly White voters. Precincts with higher proportions of Black voters had only slightly later closing times.<sup>37</sup>
- With regard to age, "[t]he data also demonstrates that precincts with higher concentrations of younger voters tended to stay open longer after 7:00pm; in contrast, those with more elderly voters tended have fewer minutes open after the official close of polls."<sup>38</sup>
- Miami-Dade had some of the longest early voting lines in the country.<sup>39</sup>
- The experts conclude that "[i]t is certainly plausible that the reduction in early voting days in Florida in 2012 exacerbated the wait times for people of color in Miami-Dade County and elsewhere."<sup>40</sup>
- The breadth of their research also demonstrates that racial disparities in wait times are not caused by being in dense, urban areas, or due to the length of the ballot, as some have opined, as racial disparities were found throughout the state and within counties with the exact same ballot.<sup>41</sup>

Our experts' prior studies also found long lines in Florida with a disparate racial impact. Florida's average wait time on Election Day in November 2012 was between 50 and 90 minutes, the longest in the country.<sup>42</sup> Professor Smith found that the "reduction in opportunities to vote early under HB 1355 disproportionately affected African-American voters, insofar as nearly half

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<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 17.

<sup>36</sup> *Id.* at 22.

<sup>37</sup> *Id.* at 38.

<sup>38</sup> *Id.* at 23.

<sup>39</sup> *Id.* at 51.

<sup>40</sup> *Id.* at 56.

<sup>41</sup> *Id.* at 56-57.

<sup>42</sup> Benjamin Jackson, *Which States Had to Wait the Longest, According to Their Tweets?* Slate, Nov. 6, 2012, [http://www.slate.com/blogs/future\\_tense/2012/11/06/voting\\_wait\\_times\\_which\\_state\\_s\\_voters\\_faced\\_the\\_longest\\_lines.html](http://www.slate.com/blogs/future_tense/2012/11/06/voting_wait_times_which_state_s_voters_faced_the_longest_lines.html); Pew Ctr. on the States, *New Data on Lines at the Polls*, The Pew Charitable Trusts Dec. 10, 2012, <http://www.pewstates.org/research/analysis/new-data-on-lines-at-the-polls-85899435524>.

of all blacks who voted in 2012 cast in-person early ballots.”<sup>43</sup> It was reported that many voters stood in line up to nine hours.<sup>44</sup> The longest lines were in Miami-Dade County, and emerging evidence shows that African-American and Latino voters were disproportionately impacted particularly during the early voting period.<sup>45</sup> Professors Michael Herron and Daniel Smith's research shows that the most heavily used early voting day was the last official day of early voting, Saturday, November 3, 2012, during which nearly 400,000 people voted.<sup>46</sup>

### **B. “Ending the Time Tax”: Underlying Causes-Cuts in Early Voting that Remain Unremedied**

There are numerous factors that can contribute to long lines such as the number of dedicated and competent staff, the existence of language barriers, the availability of registration and voting machines, the occurrence of machinery problems or technical glitches, a lack of adequate voting materials and voting booths, the design and length of ballots, frequent challenges to voter registrations, heavy use of provisional ballots, the presence of voters requesting inter-county registration transfers, the location and physical space of polling stations, the availability of parking, and weather patterns.<sup>47</sup>

**Despite all the factors that contribute to long lines, it is clear that Floridians had less access to the ballot box in 2012 because there were six fewer days of early voting.**

In our opinion, based on our review of our experts' report as well as interviews with Supervisors of Elections and community groups, the disparate impact of long lines on voters of color is likely related to the cuts in early voting enacted by the Florida legislature in 2011 when it passed House Bill 1355 (hereinafter, HB 1355), as well as other factors, such as the failure to provide any formula for polling place resources, all of which remain unresolved after the legislative session. HB 1355 cut early voting from 14 to eight days and eliminated the requirement to have early voting on the Sunday before Election Day.<sup>48</sup> Early voting turnout

<sup>43</sup> Michael C. Herron and Daniel A. Smith, “Florida’s 2012 General Election under HB 1355: Early Voting, Provisional Ballots, and Absentee Ballots *available at* <http://electionsmith.files.wordpress.com/2013/01/lwv-pr-herron-smith.pdf>.

<sup>44</sup> Amanda Terkel, *Florida Early Voting Fiasco: Voters Wait for Hours at Polls As Rick Scott Refuses to Budge*, Huffington Post, Nov. 4, 2012, [http://www.huffingtonpost.com/2012/11/04/florida-early-voting\\_n\\_2073119.html](http://www.huffingtonpost.com/2012/11/04/florida-early-voting_n_2073119.html);

<sup>45</sup> Michael C. Herron and Daniel A. Smith, “Early Voting in Florida in the Aftermath of House Bill 1355, April 15, 2013 *available at* <http://www.dartmouth.edu/~herron/HerronSmithFloridaEarly2012.pdf>.

<sup>46</sup> *Id.* at 13.

<sup>47</sup> Herron, *supra* note 4 at 11; *See*, for example, Advancement Project, “Issue Brief: Legislative Reforms to Remove Barriers to Voting in Florida,” June 1, 2010, at <http://www.advancementproject.org/resources/entry/legislative-reforms-to-remove-barriers-to-voting-in-florida>.

<sup>48</sup> H.B. 1355 (Fla. 2011); Fla. Stat. §101.657(d) (2005) amended by Chapter 2011-40 Laws of Fla.; *see* discussion below.



dropped by over 225,000 voters from 2008 to 2012,<sup>49</sup> and another study indicated that more than 201,000 voters likely did not vote at all due to the long lines.<sup>50</sup> The Department of Justice ("DOJ") agreed to pre-clear the early voting changes in HB 1355 after five of the counties in Florida covered under Section 5 of the Voting Rights Act ("VRA") offered early voting for 12 hours on each of the eight available days.<sup>51</sup>

Furthermore, during this legislative session, the Florida legislature failed to remedy the problems of HB 1355 with House Bill 7013. House Bill 7013 (hereinafter, HB 7013), is the omnibus elections bill that passed this session by the Florida Legislature that goes into effect on January 1, 2014. HB 7013 gives Supervisors of Elections discretion to decide if their county should have early voting between eight and 14 days. Giving individual Supervisors of Elections the option to expand early voting, rather than fully restoring the period to 14 days, does not go far enough to address this severe and unacceptable problem of the long lines in Florida. We need to fix this, and half measures are not enough. Voters of color are more likely to take advantage of early voting – particularly on the last Sunday before Election Day, when African-American churches have historically organized statewide "Souls to the Polls" campaigns encouraging and helping congregants to vote. If the formerly mandatory 14 days of early voting are not restored, voters of color will be disproportionately affected in future elections.

### C. Turnout

In Florida, turnout in the 2008 election was 7.95 million and increased to 8.1 million in 2012.<sup>52</sup> African American turnout has been increasing since 2000, and turnout among other voters of color has also increased, in larger part because of the growing Latino population. In Florida, the Puerto Rican population in particular has increased dramatically over the last decade. Looking at turnout in 2008, Florida election administrators should have expected an equally high if not increased turnout, and yet the long lines were prohibitive for millions of voters. Herron and Smith's analysis of 2012 election data also shows that African Americans and Latinos also turned out in proportionally higher numbers than non-Hispanic whites to vote early during the November 2012 election, representing 22.4 percent and 11.1 percent of the early voting electorate respectively, whereas their proportion of the 2012 electorate was 13.6 and 13.9 percent, respectively.<sup>53</sup> Various studies of emerging data over the last months continue to confirm the disparate impact.

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<sup>49</sup> Herron and Smith, Florida's 2012 General Election under HB 1355: Early Voting, Provisional Ballots, and Absentee Ballots 1, *available at* <http://electionsmith.files.wordpress.com/2013/01/lwv-pr-herron-smith.pdf>.

<sup>50</sup> Analysis: 201,000 voters didn't vote because of long lines, Orlando Sentinel, Jan. 29, 2013 *available at* [http://articles.orlandosentinel.com/2013-01-29/business/os-voter-lines-statewide-20130118\\_1\\_long-lines-sentinel-analysis-state-ken-detzner](http://articles.orlandosentinel.com/2013-01-29/business/os-voter-lines-statewide-20130118_1_long-lines-sentinel-analysis-state-ken-detzner).

<sup>51</sup> United States' Notice to the Court, *Florida v. U.S.*, No. 11-CV-01428 (D.D.C. Sept. 12, 2012) After Collier, Hardy, Hendry, Hillsborough, and Monroe counties indicated that they would indeed offer the maximum number of early voting hours, the DOJ granted preclearance.

<sup>52</sup> Voting and Registration in the Election of 2012

<http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2012/tables.html>.

<sup>53</sup> Herron, *supra* note 26 at 11.

Despite the long lines, Florida citizens showed up for early voting in record numbers. We saw it in the determination of voters like Desiline Victor. Victor, who at 102, due to fatigue, had to leave her polling place at North Miami Library after waiting in line for three hours, only to insist on returning later with members of our staff to cast her ballot. When she emerged from the polling place wearing her "I voted" sticker after casting her ballot, hoping this is not the last time she will do so, the crowds still waiting to vote erupted in applause. We saw when Florida poll workers closed their doors on an unexpectedly massive crowd of early voters, only to be met with chants of "We want to vote! We want to vote!" We saw it in black church leaders who, in response to Florida's elimination of the last Sunday of early voting, set a new date for their community's popular "Souls to the Polls" voter mobilization campaign -- and made history with a larger-than-ever early voting turnout. However, there is no reason that election administrators should not have been prepared for such a high turnout.

Moreover, as the U.S. Census recently reported in *The Diversifying Electorate—Voting Rates by Race and Hispanic Origin in 2012* issued on May 13,<sup>54</sup> the number of eligible voters of color is expected to continue to increase dramatically in the coming years. Rather than making it harder for these citizens to vote, election administrators should be taking steps to ensure that there is no discrimination in voting and that no citizen is forced to wait for many hours in order to exercise their fundamental right to vote. For all these reasons, we urge the Commission to adopt our Recommendations regarding the necessary remedial measures discussed in Section III below, including the provision of adequate polling place resources, voter assistance (including language assistance), and full restoration of Early Voting.

#### **D. The High Rejection Rate of Provisional and Absentee Ballots Cast by Voters of Color**

The high rate of rejection of provisional and absentee ballots, and their disparate impact relate to issues (viii) provisional ballots; and (ix) absentee ballots, of Executive Order 13639.

##### **1. Provisional Ballots**

Nearly 30,000 Floridians were forced to vote provisional ballots last year, and many of these provisional ballots were cast because voters moved from one county to another.<sup>55</sup> Over one-fifth of these provisional ballots were not counted.<sup>56</sup> At one Tampa precinct, voters were given so many provisional ballots that it was dubbed provisional city. Processing provisional ballots places costly and unnecessary burdens on election officials. In Florida during the 2012 election, voters of color were also "more likely than white voters to cast provisional ballots and nearly twice as likely to have their provisional ballots rejected."<sup>57</sup>

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<sup>54</sup> *Id.*; Voting and Registration in the Election of 2008 <http://www.census.gov/prod/2010pubs/p20-562.pdf>.

<sup>55</sup> Herron, *supra* note 49 at 3.

<sup>56</sup> *Id.*

<sup>57</sup> Herron, *supra* note 49 at 1.

African Americans and Latinos were forced to cast provisional ballots at a high rate in 2012. In Florida, African Americans cast more than 6,700 provisional ballots and Latinos cast more than 4,400 provisional ballots.<sup>58</sup> In 2012, the provisional ballot rejection rate in Florida was 49.5 percent.<sup>59</sup> In 2012, more than 23,000 absentee ballots were "rejected as illegal" by county canvassing boards.<sup>60</sup> Moreover, the absentee ballot rejection rate for African Americans in Florida was also nearly twice the absentee ballot rejection rate of white voters.<sup>61</sup>

## **2. Absentee Ballots**

Herron and Smith also concluded that more voters of color cast absentee ballots than in the past because of long lines during early voting and the fear of lengthy delays on Election Day. The total number of absentee ballots increased from 1.85 million in 2008 to 2.37 million in 2012.<sup>62</sup> Out of the 220,000 absentee ballot cast by African Americans in 2012 1.5 percent were rejected.<sup>63</sup> Out of the 250,000 absentee ballots cast by Hispanics in 2012 more than 1.3 percent of the ballots.<sup>64</sup> In contrast, only 0.8 percent of the 1.78 million absentee ballots cast by white voters were rejected.<sup>65</sup>

Many of the absentee ballots that were cast by African Americans were rejected due to the change in law around the standard of signatures for absentee ballots requiring that the signature on the absentee ballot match the signature on the voter registration application.<sup>66</sup> This law did not take into consideration that signatures can change and evolve over time.

## **E. Florida Needs a Better Election Administration System at the Polls: The Need for Electronic Poll books**

Florida needs a better election administration system that would reduce the number of provisional ballots issued to voters. Processing provisional ballots places costly and unnecessary burdens on election officials. Prior to HB 1355 in 2011, Florida allowed statewide portability for registration, which permitted voters in Florida who moved to another county to vote a regular ballot on Election Day, by simply filling out a change of address form. In 2011, HB 1355 required legally registered voters in Florida to cast provisional ballots if they moved from one county to another without updating their address. Because of this law, numerous Floridians were

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<sup>58</sup> Herron, *supra* note 49 at 3.

<sup>59</sup> Michael Van Sickler, Provisional Ballots Spike but Florida Elections Officials Say the Aren't Needed, Miami Herald, Dec. 17, 2012 available at [http://www.miamiherald.com/2012/12/17/3145753\\_provisional-ballots-spike-but.html](http://www.miamiherald.com/2012/12/17/3145753_provisional-ballots-spike-but.html).

<sup>60</sup> Herron, *supra* note 49 at 3.

<sup>61</sup> Herron, *supra* note 49 at 1.

<sup>62</sup> Herron, *supra* note 49 at 3.

<sup>63</sup> Herron, *supra* note 49 at 4.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

forced to vote provisional ballots in 2012.<sup>67</sup> Many of these voters were disproportionately African American and Latino.<sup>68</sup>

HB 7013, the omnibus election bill that passed this legislative session, allows voters who moved from one county to another in Florida to update their address on Election Day and vote a regular ballot as long as they are voting in a county that uses electronic poll books. This allows poll workers to make address changes, redirect voters to their correct precinct, and determine if a voter already voted or voted absentee. In order for this law to be effective, Supervisors of Elections in Florida must request funding for electronic poll books from their Board of County Commissioners to ensure there is an adequate number of electronic poll books during both the early voting period and on Election Day.

Without county funding for electronic poll books, voters who are inter-county movers will be forced to vote provisional ballots. Supervisors of Elections have already submitted budgets for the 2014 elections to their Board of County Commissioners and many of them requested funding for electronic poll books.

### **III. Recommendations Relating to Executive Order 13639**

Advancement Project urges the Commission to make the following recommendations relating to Executive Order 13639 in order to make elections free, fair and accessible for all Floridians. We also urge the Commission to continue monitoring Florida elections, especially during presidential elections when turnout is highest, to determine how the recommendations are performing in real time, and what further measures may be necessary to address unforeseen or changing circumstances, so that Florida voters of color and for that matter, any citizen, will no longer have to pay a Time Tax or surmount other undue obstacles to exercise their fundamental right to vote. The maximum acceptable wait time for either early voting or Election Day voting should be 20 minutes (except in emergency circumstances, but even then, there should be a backup plan to ensure that voters can vote in a timely manner). The following measures are based on our review of 2012 election administration data, as well as our ongoing work with community groups, voters of color, and Supervisors of Elections, in which we have constantly received information and analyzed what measures are needed to ensure free, fair and accessible elections in Florida since 2000. They represent the minimum measures that need to be taken to end the Time Tax.

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<sup>67</sup> Herron, *supra* note 45 at 3.

<sup>68</sup> Herron, *supra* note 45 at 1.

**Executive Order 13639 § 3 (a) (i): The number, location, management, operation, and design of polling places**

**Early Voting**

- Allow Supervisors of Elections to have discretion to expand sites for early voting based upon local needs. Supervisors of Elections should not be confined to the list of early voting sites provided under HB 7013.
- Require small counties to offer the same number of early voting hours as large counties. Voters from every region of Florida should have the same opportunity to vote. The duration of early voting should not be left to the discretion of 67 individual Supervisors of Elections, which could create equal protection problems. This does not impose an undue burden on smaller counties, which can simply offer early voting in their Supervisor of Elections office.
- Increase the mandatory number of early voting hours to 168 – requiring early voting for 14 days, with 12 hours per day, including two full weekends. During the 2012 election, Florida had 96 hours of mandatory early voting. Under HB 7013 mandatory early voting hours are reduced to only 64 over a period of eight days. The Commission should be making every effort to increase opportunities to the ballot box, not maintaining restrictions that make voting harder.

**Polling Place Resources**

- Increase polling place resources by implementing a statutory formula. A formula based on anticipated turnout should be applied to ensure an adequate number of poll workers, machines, privacy booths, scanners, printers and translators per polling place. This common sense step, which exists in other states,<sup>69</sup> coupled with an increase in early voting days and hours, will help to ensure shorter lines in future elections.

**Executive Order 13639 § 3 (a) (iv) and (viii): The efficient management of voter rolls and poll books and management of issuing and processing provisional ballots in the polling place on Election Day.**

**Electronic Poll books**

- Require all counties to use electronic poll books for both early voting and Election Day. This will allow voters who moved from one county to another to update their address at the

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<sup>69</sup> Alabama (Ala. Code §§ 17-6-2, 17-6-4-17-6-6), California (Cal. Elec. Code § 12223), Georgia (Ga. Code § 21-2-263), Illinois (10 Ill. Comp. Stat. §§ 5/11-2, 5/24-1), Michigan (Mich. Comp. Laws §§ 168.656, 168.661, 168.664, 168.796a), Nevada (Nev. Rev. Stat. § 293.207), New York (N.Y. Elec. Law § 4-100, 15-114), Ohio (Ohio Rev. Code §§ 3501.18, 3506.22), South Carolina (S.C. Code §§ 7-7-710, 7-13-1680), Virginia (Va. Code §§ 24.2-307, 24.2-627), and Wisconsin (Wis. Stat. §§ 5.15, 5.35) all have a statutory formula for polling place resources, or a maximum number of voters per precinct.



polling location and vote a regular ballot instead of a provisional ballot. Supervisors of Elections in Florida must request funding for electronic poll books from their Board of County Commissioners to ensure there is an adequate number of electronic poll books during both the early voting period and on Election Day in their counties. The Commission should urge the Board of County Commissioners to pass each Supervisor of Elections Election Administration Budget.

### **Voter Registration “Modernization”**

- Provide secure, online voter registration that does not exclude any eligible voter from participating.
- Allow for same-day voter registration for all voters during both Early Voting and on Election Day.
- Increase voter registration and voter education opportunities in high schools.

**Executive Order 13639 § 3 (a) (ii) and (vii): The training, recruitment, and number of poll workers; Voting accessibility for individuals with disabilities, limited English proficiency, and other special needs.**

### **Poll worker Training and Recruitment**

- Designate and train county election officials to conduct strategic outreach and engagement activities with voters of color; including through community advisory boards, voter registration and participation events, and poll worker recruitment.
- Provide sufficient bilingual election materials, including all ballots, voter registration materials, and instructions, as well as a sufficient number of bilingual poll-workers, as required by law or as needed by limited-English proficient (“LEP”) voters; and provide year-round bilingual voter education and outreach efforts.
- Poll workers should be trained in the protections of the Voting Rights Act,<sup>70</sup> and Florida’s Voter Bill of Rights and Responsibilities,<sup>71</sup> both of which provide for voters’ rights to receive

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<sup>70</sup> 42 U.S.C. §1973.

<sup>71</sup> See, Florida State Association of Supervisors of Elections, Voter’s Bill of Rights and Voter Responsibilities, at <http://www.myfloridaelections.org/index.php?id=40>, providing that: Each registered voter in this state has the right to:

1. Vote and have his or her vote accurately counted.
2. Cast a vote if he or she is in line at the official closing of the polls in that county.
3. *Ask for and receive assistance in voting.*
4. Receive up to two replacement ballots if he or she makes a mistake prior to the ballot being cast.
5. An explanation if his or her registration or identity is in question.
6. If his or her registration or identity is in question, cast a provisional ballot.

assistance for literacy or any other issues. Poll workers should readily provide any assistance needed for voters to understand the ballot and election procedures, and they must permit voters to receive assistance from their own assistants-of-choice, unless they are their employer or union representative.<sup>72</sup>

**Executive Order 13639 § 3 (a) (ix): The issues presented by the administration of absentee ballot programs.**

- Require no-excuse absentee voting with procedures to prevent duplicate voting and fraud.

**Executive Order 13639 § 3 (a) (xi): Other issues related to the efficient administration of elections that the Co-Chairs agree are necessary and appropriate to the Commission's work.**

- Require state and local election officials to measure and report the waiting times for voters in every precinct in Florida, throughout various times of day, during early voting and on Election Day. There is no reason this should not be kept as a constant public record, open to scrutiny such that voters are no longer required to take hours to vote. The maximum wait time should be 20 minutes (except in emergency circumstances, and even then, backup plans should be in place to ensure that voters can vote and have their votes counted in a timely manner).
- Refrain from purges of voter registration rolls using inaccurate or inappropriate governmental or commercial databases, especially outside of the 90-day window required by the National Voter Registration Act ("NVRA" or "Motor Voter").
- State constitutional amendment providing an automatic restoration of civil rights for all people with felony convictions.
- Right to vote enshrined in the Florida Constitution. All United States citizens over 18 years of age who are residents of the state of Florida shall have a fundamental right to vote in any public election held in the jurisdiction in which the citizen resides. The right to vote shall not be denied or abridged by the State, or any other public or private person or entity, except where there is a compelling state interest, the State may establish regulations narrowly tailored to produce fair, efficient and accessible elections. Every citizen who is a resident of the State of Florida shall have equal protection of his or her right to vote. A person whose right to vote has been denied or abridged by the State, or any other public or private person

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7. *Written instructions to use when voting, and, upon request, oral instructions in voting from elections officers.*

8. *Vote free from coercion or intimidation by elections officers or any other person.*

9. *Vote on a voting system that is in working condition and that will allow votes to be accurately cast. (Emphasis added.)*

<sup>72</sup> 42 U.S.C. §1973aa-6.

or entity in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief.

- Recording and publishing data about wait times should also be a part of regular election administration reporting across the country.

Accordingly, Advancement Project appreciates the opportunity to submit this public comment and anticipates providing more specific comment to the Commission as it proceeds with its work. Please do not hesitate to contact Katherine Culliton-González, Senior Attorney and Director of Voter Protection ([kcullitongonzalez@advancementproject.org](mailto:kcullitongonzalez@advancementproject.org), (202) 728-9557, Leigh Chapman, Staff Attorney ([lichapman@advancementproject.org](mailto:lichapman@advancementproject.org)) or Carolyn Thompson, Florida Voter Protection Advocate ([cthompson@advancementproject.org](mailto:cthompson@advancementproject.org)) with any questions or for further information about our recommendations in Florida.

Respectfully submitted,

Advancement Project